SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1070~~ 175

BOSTON PRINTING PRESSMEN'S UNION NO. 67,

PETITIONER,

v.

POTTER PRESS,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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TABLE OF CONTENTS

Opinions Below 1

Jurisdiction 2

Question Presented 2

Statutes Involved 2

Statement 3

Reasons for Granting the Writ 5

Conclusion 15

Appendix A—Opinion of the Court of Appeals for the First Circuit 16

Statutes

Labor-Management Relations Act, 1947, Sec. 301 ..... 2, 3, 5, 6, 12, 15

Norris-LaGuardia Act 7, 12

United States Arbitration Act 5, 6, 7, 12

Cases Cited

General Electric Co. v. U.E., No. 276, decided June 3, 1957 ..... 5, 7, 15

Goodall-Sanford, Inc. v. United Textile Workers, No. 262, decided June 3, 1957 ..... 5.

Textile Workers v. Lincoln Mills of Alabama, No. 211, decided June 3, 1957 ..... 5, 7, 12, 15

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BOSTON PRINTING PRESSMEN'S UNION NO. 67,

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RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED SATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on March 8, 1957.

OPINIONS BELOW

The Opinion of the District Court is reported in 141 F. Supp. 553 and is reprinted in the Record herein commencing R. 32. The Opinion of the Court of Appeals is reprinted in the Record herein commencing at R. 43, is reported at 241 F. 2d 787, and is attached hereto as Appendix "A".

JURISDICTION

The judgment of the Court of Appeals was entered on March 8, 1957 (R. 48). By order of this Court the time for filing petition for writ of certiorari was extended until and including June 10, 1957.

The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1254(1).

QUESTION PRESENTED

Whether Section 301 of the Labor-Management Relations Act of 1947 empowers federal district courts to enforce, by mandatory injunction or otherwise, an agreement between a union and an employer to arbitrate the substantive terms of renewal contracts as distinguished from an agreement to arbitrate grievance disputes.

STATUTES INVOLVED

Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. Sec. 185, provides as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States, having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."
>
> "(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any

such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

STATEMENT

This suit is brought under Section 301 of the Labor-Management Relations Act, 1947, 29 U.S.C.A., Sec. 185. The plaintiff below, petitioner here, is Boston Printing Pressmen's Union No. 67, a local labor union organized as an unincorporated association (R. 3).

Respondent is a Massachusetts corporation conducting a printing business in Waltham, Massachusetts. Petitioner is the duly designated and selected collective bargaining representative for all of the respondent's pressroom employees (R. 4).

On October 20, 1952, petitioner and respondent entered into a written collective bargaining contract for a term of two years from September 1, 1952, and providing (Section XVII) that upon the expiration thereof *"all questions regarding a new contract and scale to become effective at the expiration of this Agreement which cannot be settled by conciliation shall be decided by arbitration, as above provided, and this Agreement shall remain in force until all differences are settled by conciliation or arbitration."* (R. 5, 19.) That Agreement also provided (R. 17) that "All Differences between the parties arising under this contract and affecting wages, hours, working conditions, shop practices or other matters, shall be adjusted as provided in Sections XV and XVI. During the life of this Agreement, the Company agrees that there shall

be no lockouts declared and the Union agrees that there shall be no sit-downs, walk-outs, strikes, boycotts or any form of concerted interference with the normal and efficient operation of the plant."

Following appropriate notice from the petitioner union of its desire to modify the agreement in certain particulars, negotiating meetings were had between the contracting parties, which failed to result in accord upon three particular changes proposed by the union by way of amendment to the collective bargaining agreement in question. These changes were: (1) three weeks' vacation with pay; (2) additional holidays; and (3) a sick and accident program. In conformity with the contract, petitioner accordingly requested the submission to arbitration of these differences which had not been settled by conciliation. Respondent then assumed the position that "Section XVII of the expired contract does not create a valid and enforcible obligation to arbitrate the renewal terms of the contract." (R. 9, 35).

On February 21, 1956, petitioner filed its Complaint in the United States District Court for the District of Massachusetts, alleging jurisdiction under Section 301 of the Labor-Management Relations Act, 1947, and seeking an order directing respondent to arbitrate its specified unresolved differences with petitioner (R. 3).

Respondent then filed its Motion to Dismiss the Complaint on the ground that the Court was without authority to enter an order directing respondent to arbitrate its differences with petitioner (R. 22).

Thereafter, petitioner filed its Motion for Summary Judgment, supported by the affidavit of its principal official (R. 23).

The District Court, on May 29, 1956, granted respondent's Motion to Dismiss, and denied petitioner's

Motion for Summary Judgment (R. 32, 40). See 141 F. Supp. 553.

From such Orders of the District Court, the petitioner union thereupon appealed to the United States Court of Appeals for the First Circuit (R. 41). That court, after hearing arguments of counsel, affirmed the judgment of the District Court in a written opinion (R. 43, 48), 241 F. 2d 787, Appendix "A" herein. The Opinion of the Court of Appeals, in denying petitioner the relief sought, adopted the reasoning of the District Court which, in substance, was that neither Section 301 of the Labor-Management Relations Act of 1947 nor the United States Arbitration Act empowered the federal courts to enforce agreements to arbitrate the substantive terms of renewal contracts (referred to by the court below as prospective or quasi-legislative arbitration) as distinguished from agreements to arbitrate grievance disputes (referred to by the court below as quasi-judicial or retrospective arbitration), the general common law being against the enforceability of the former type of arbitration agreement. At the time its Opinion was written the Court of Appeals did not yet have the benefit of this Court's opinion in *General Electric Co. v. U.E.*, No. 276; *Textile Workers v. Lincoln Mills of Alabama*, No. 211; *Goodall-Sanford, Inc. v. United Textile Workers*, No. 262; all decided June 3, 1957, although it had delayed issuing its opinion in the hope that it would have guidance from this Court.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law which has not been, but should be, settled by this Court. Indeed, in view of the decisions of this Court in *General Electric Company v. U.E., supra*, and *Textile Workers v. Lincoln Mills, supra*, decided subsequent to the decision herein of the Court of Appeals, it would

appear that the decision below and the reasoning on which it is based is in direct conflict with applicable decisions of this Court.

It is obvious that the issue involved is an extremely important one in the administration of the national labor policy. Major segments of American industry, notably the printing industry and the street railway and bus industry, have traditionally conducted their employer-employee relationships on a basis of a policy of continuing industrial peace achieved through the process of voluntary arbitration of all disputes, that is, arbitration not only of disputes concerning grievances under current agreements, but also of disputes concerning the substantive terms of renewal agreements and this policy has served, as a practical matter, to achieve in these industries a measure of industrial stability not found in other segments of the American economy. Under the decision below, an important, indeed an indispensable, means of enforcing that policy as against recalcitrants, be they unions or employers, has been lost, namely, the use of the equitable powers of the federal courts to enforce such voluntary agreements in industries affecting commerce. For reasons which will be adverted to below, it is respectfully submitted that the holding of the Court of Appeals is inconsistent both with national labor policy and with this Court's recent construction of the scope of Section 301 of the Taft-Hartley Act, and accordingly should be reviewed by this Court.

As indicated above, the decisions both of the District Court and of the Court of Appeals below were predicated primarily on the conclusion that neither Section 301 of the National Labor Relations Act of 1947 nor the United States Arbitration Act conferred authority upon the federal courts to enforce agreements to arbitrate renewal terms of collective agreements.

Although there are major considerations which would compel a contrary conclusion respecting the authority of the United States Arbitration Act in this respect[1], it would serve no purpose to elaborate upon them here for the reason that this Court in the *General Electric* and *Lincoln Mills* cases, *supra*, specifically held that the power of the federal courts to enforce arbitration agreements is not to be derived solely or exclusively from the provisions of the United States Arbitration Act, but rather that such authority can be determined by reference to the national labor policy as expressed in other of federal statutes, such as the Taft-Hartley Act and the earlier Norris-LaGuardia Act, both of which favor enforceability of arbitration agreements, particularly where, as here, there is a *quid pro quo* in the relinquishment of the right to strike and a consequent insuring of industrial peace. Furthermore, directly contrary to the holding below, this Court has held in the above cases that Section 301 in itself, together with the traditional equitable powers of the district courts, contain all the authority necessary to the enforceability of arbitration agreements, at least in industries affecting interstate commerce.

This Court, in the *Lincoln Mills* and *General Electric* cases, *supra*, stated in the foregoing respects as follows:

1. On the applicable substantive law:

> "The question then is, what is the substantive law to be applied to suits under § 301(a)? We

[1] Such considerations, which will be elaborated upon if certiorari herein is granted, include the following: The legislative history of the United States Arbitration Act and the language of that Act as indicating an intent to permit enforcement of all types of arbitration agreements; the failure both of that language and of the legislative history to make any distinction between grievance arbitration and arbitration concerning the substantive terms of renewal contracts; and the federal policy implicit in the United States Arbitration Act taken together with other federal enactments in the field.

conclude that the substantive law to apply in suits under § 301(a) is federal law which the courts must fashion from the policy of our national labor laws. See Mendelsohn, Enforceability of Arbitration Agreements Under Taft-Hartley Section 301, 66 Yale L. J. 167. The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. See Board of Commissioners v. United States, 308 U.S. 343, 351. Federal interpretation of the federal law will govern, not state law. Cf. Jerome v. United States, 318 U.S. 101, 104. (*Lincoln Mills*)

2. On the federal policy of enforcing arbitration agreements as a means of insuring industrial peace:

"Congress was also interested in promoting collective bargaining that ended with agreements not to strike. The Senate Report, supra, p. 16 states:

"If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assur-

ing freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

"Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts."

"Thus collective bargaining contracts were made "equally binding and enforceable on both parties." Id., p. 15. As stated in the House Report, supra, p. 6, the new provision "makes labor organizations equally responsible with employers for contract violation and provides for suit by either against the other in the United States district courts." To repeat, the Senate Report, supra, p. 17, summed up the philosophy of § 301 as follows: "Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace."

Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way."

* * * * * * * * * * *

"Section 8 of the Norris-LaGuardia Act does, indeed, indicate a congressional policy toward

settlement of labor disputes by arbitration, for it denies injunctive relief to any person who has failed to make "every reasonable effort" to settle the dispute by negotiation, mediation, or "voluntary arbitration." (*Lincoln Mills*)

3. On the relevancy of the United States Arbitration Act:

"The Court of Appeals reversed, 233 F.2d 85, 36 LRRM 2305. It first held that the Norris-LaGuardia Act did not bar enforcement of the arbitration agreement. It then held that while § 301 (a) of the Labor Management Relations Act of 1947 gave the District Court jurisdiction of the cause, it supplied no body of substantive law to enforce an arbitration agreement governing grievances. But it found such a basis in the United States Arbitration Act, which it held applicable to these collective bargaining agreements. It accordingly reversed the District Court judgment and remanded the cause to that court for further proceedings.

"We affirm that judgment and remand the cause to the District Court. We follow in part a different path than the Court of Appeals, though we reach the same result. As indicated in our opinion in No. 211, Textile Workers Union of America v. Lincoln Mills of Alabama, supra, we think that § 301 (a) furnishes a body of federal substantive law for the enforcement of collective bargaining agreements in industries in commerce or affecting commerce and that the Norris-LaGuardia Act does not bar the issuance of an injunction to enforce the obligation to arbitrate grievance disputes." (*General Electric*)

4. On utilizing the inherent equity powers of the federal district courts:

> "Having jurisdiction over the suit, the court was not powerless to fashion an appropriate federal remedy. The power to decree specific performance of a collectively bargained agreement to arbitrate finds its source in § 301 itself,[1] and in a Federal District Court's inherent equitable powers, nurtured by a congressional policy to encourage and enforce labor arbitration in industries affecting commerce".[2] (Concurring Opinion in *Lincoln Mills*)

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[1] See the opinion of Judge Wyzanski in Textile Workers Union v. American Thread Co., 113 F.Supp. 137, 32 LRRM 2205.

[2] See the dissent of Judge Brown in the Court of Appeals in this case, 230 F.2d 81, 89, 37 LRRM 2462. (Concurring opinion of Justices and Harlan in *London Mills*.)

* * * * * * * * * * *

Both the District Court and the Court of Appeals below, although not specifically passing on the point, expressed concern over the constitutional problems which might be involved if Section 301 were given substantive effect. This Court in *Lincoln Mills, supra*, disposed of that question as follows:

> "There is no constitutional difficulty. Article III, § 2 extends the judicial power to cases 'arising under . . . . the Laws of the United States. . . .' The power of Congress to regulate these labor-management controversies under the Commerce Clause is plain. Houston & Texas R.Co. v. United States, 234 U.S. 342; Labor Board v. Jones & Laughlin Corp., 301 U.S. 1, 1 LRRM 703. A case or controversy arising under § 301(a) is, therefore, one within the purview of judicial power as defined in Article III."

The District Court below manifested concern over the propriety, as a matter of national labor policy, of enforcing agreements to arbitrate what it termed "prospective" or "quasi-legislative" arbitration agreements involving the substantive terms of renewal agreements, as distinguished from agreements to arbitrate grievances arising out of existing agreements. Congress did not express any similar concern in any of its statutory enactments in the field such as the Taft-Hartley Act, the Norris LaGuardia Act, or the United States Arbitration Act, nor is there any evidence of such concern in the legislative history of the foregoing laws. Indeed, Congress nowhere made even a distinction between the two types of arbitration agreements. Whatever distinction the various courts might have made at common law has become academic with the passage of Section 301 of the Taft-Hartley Act, for, as this Court stated in *Lincoln Mills, supra*, that Section "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements and includes within that federal law specific performance of promises to arbitrate grievances under collective bargaining agreements." As further stated by this Court in that case:

> "It seems, therefore, clear to us that Congress adopted a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common-law rule, discussed in Red Cross Line v. Atlantic Fruit Co. 264 U.S. 109, against enforcement of executory agreements to arbitrate."

The District Court below, although not professing any exact knowledge on the subject, was concerned with the possibility that agreements to arbitrate the terms of future agreements were something unique or extraordinary in the field of labor relations and, there-

fore, outside the area of federal concern. Attached to petitioners brief below and made a part of the Record herein is an affidavit which indicates the present and past use of this type of agreement in American industry and which demonstrates that in the printing industry, with which we are here concerned, similar types of agreements to arbitrate future disputes have been used throughout 88% of the newspaper publishing branch of the industry since 1910 and throughout the commercial printing branch of the industry in respect to the vast majority of printing establishments since 1947. Under these agreements the arbitration process has been successfully substituted for strike and lockout action in the industry during this entire period. Thus, at least in important and widespread sections of American industry the use of agreements to arbitrate the terms of renewal or future contracts would seem to be sufficiently prevalent to discount the argument that they are so unique as to be beyond any possible contemplation by Congress.

The District Court below expressed fear that "quasi-legislative" arbitration came perilously close to compulsory arbitration. But the essence of compulsory arbitration and the single feature thereof to which both labor and industry have consistently taken exception is the forcing of the parties, by governmental edict and against their wishes, into having their economic disputes determined by third party arbitrators. It is that aspect of compulsion alone which has been resisted by labor and management and not the compulsion inherent in judicial enforcement of any promise or agreement voluntarily entered into. In the instant case the parties, acting entirely voluntarily and in an effort to avoid the disruption to production and the loss of employment that is entailed in a strike, have mutually agreed to submit unresolved issues respecting the terms of renewal agreements to a jointly se-

lected board of arbitrators. To imply, as did the District Court below, that the parties perhaps did not envisage judicial enforcement is to attribute to such parties a naivete or an ignorance which they cannot fairly be assumed to possess.

The District Court below manifested reluctance to invoke the aid of the federal courts to enforce what it termed "quasi-legislative" arbitration because it feared the consequence of plunging the courts into a "bottomless pit of dispute over future working conditions". The court seemed to assume that a decision in favor of petitioner would require the courts "to go into the field of quasi-legislative labor awards". Considerations such as these are revelant only if it can be assumed that courts themselves will undertake to adjudicate or determine the substantive terms of collective agreements. That, of course, is simply not so; under the arbitration clauses in question the arbitrators and not the courts would adjudicate and determine the merits of disputes concerning terms and conditions of renewal agreements. The function of the courts in respect to such arbitration would be no more or no less than that which they would exercise under the so-called "quasi-judicial" arbitration agreements involving disputes over the interpretation and application of existing agreements, namely, they would merely require the parties to submit the dispute, whatever it might be, to arbitration under the parties' own agreement subject to the same procedural safeguards that are applicable to any power to compel or enforce arbitration.

It would appear that there is little warrant for the above concern felt by the District Court respecting the subjects which the parties have agreed to arbitrate. A statute provides redress for contract breach, and if that breach flows from a refusal to arbitrate one issue

rather than another, it is no less a breach of agreement, for which Section 301 provides a remedy.

The nature of this case is such as to present a particularly compelling invitation to a federal district court to employ its equitable powers toward promoting the peaceable settlement of labor controversies. For here, a union and an employer have voluntarily, and by solemn contractual undertaking, agreed to forego economic warfare during the fixed term of their contract and to settle disputes concerning renewal terms through the processes of arbitration. In so doing, the contracting parties were bargaining in a manner consonant with a national labor policy of encouraging the settlement of labor disputes through the arbitral process, and it is respectfully submitted that under the reasoning of this Court in *Lincoln Mills* and *General Electric, supra*, Section 301 can be properly invoked to the end of compelling that party which had defaulted in its commitments to abide by them.

CONCLUSION

It is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5139

BOSTON PRINTING PRESSMEN'S UNION NO. 67,

PLAINTIFF, APPELLANT,

v.

POTTER PRESS,

DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.
[141 F. Supp. 553]

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

John S. McLellan, with whom *Herbert S. Thatcher* and *Robert M. Segal* were on brief, for appellant.

Harold Rosenwald, with whom *Edward Schneider*, *Hugh D. Rogovin* and *Schneider, Bronstein & Shapiro* were on brief, for appellee.

OPINION OF THE COURT
March 8, 1957

MAGRUDER, *Chief Judge*. The appeal here is from a judgment dismissing a complaint upon motion of the defendant.

Boston Printing Pressmen's Union No. 67 on February 21, 1956, filed its complaint against the Potter Press, a Massachusetts corporation, under § 301 of the Labor-Management Relations Act of 1947 (61 Stat. 156). Section 301(a) of this enactment reads:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

The Union had entered into a written collective bargaining agreement with the Potter Press, effective September 1, 1952, and due to expire, according to its terms, on September 1, 1954. Section 1 provided that if either party desired a change or alteration of any of the terms of the contract, such party must give written notice to the other at least sixty days prior to the expiration date (September 1, 1954), failing which "this Agreement shall continue in force for another year." Section XVI contained provisions for setting up an arbitration committee, to which committee "shall be referred all questions that may arise affecting this contract and scale of prices; the construction to be placed upon any clause or clauses of this Agreement or scale or any violation thereof which cannot be settled otherwise. . ."

The next section (XVII) contained the following important provision:

> "It is also agreed that all questions regarding a new contract and scale to become effective at the expiration of this Agreement, which cannot be settled by conciliation, shall be decided by arbitration as above provided, and this Agreement shall remain in force until all differences are settled by conciliation or arbitration."

On June 22, 1954, the Union notified the employer of its desire to discuss certain proposed changes in the

terms and conditions of employment. Various negotiations followed, including some discussion of arbitration. On December 30, 1955, the Union wrote to the Company a formal recital that three unresolved questions regarding a renewal contract had not been settled by conciliation, namely three weeks' vacation with pay, two additional holidays, and a sick and accident program; and accordingly the Union demanded that the Company submit these three unresolved questions to the arbitration committee in accordance with the contract. Eventually the Company wrote in reply that in its opinion the collective bargaining agreement with the Union had expired and that the parties had been unable to agree upon the terms of a reneway contract. "It is the position of the Company that Section 17 of the expired contract does not create a valid and enforceable obligation to arbitrate the renewal terms of the contract." Thereafter the Union filed its complaint in the United States District Court for the District of Massachusetts, setting forth the above facts and asking for an order directing the defendant to proceed to arbitrate the aforesaid unresolved differences. This complaint the district court dismissed, as above stated.

In *Local 205, United Electrical, Radio & Machine Workers of America (UE) v. General Electric Co.*, 233 F.2d 85 (1956), this court decided that a federal district court was empowered, by the conjoint authority of § 301 of the Labor-Management Relations Act and of the United States Arbitration Act, as amended (43 Stat. 883, 61 Stat. 669, 68 Stat. 1233), to decree against an employer the specific performance of a collective bargaining agreement binding the employer to submit to arbitration a dispute over whether a certain employee was employed in a job classification carrying a higher rate of pay than he in fact was receiving, and another dispute involving the propriety of the discharge of an employee for refusing to clean certain

machines when he asserted that such work was in addition to his regular duties, the answer to these controversies depending upon the proper interpretation to be given to provisions of the collective bargaining agreement.

When the present appeal was argued before us last November, we first thought it would be better for us to defer its disposition until we found out what the Supreme Court of the United States was going to do with *Local 205, United Electrical &c.* v. *General Electric Co.* then pending on certiorari. Though certiorari was granted in that case early in October, 1956 (352 U.S. 822), the Supreme Court has not yet heard argument and seems unlikely to do so at least until the latter part of March. Since the *General Electric* case is an important and rather complicated one, it is not impossible that final disposition by the Supreme Court might be delayed until next fall, though of course this is pure speculation on our part.

If the Supreme Court should not sustain us in any one of a number of points, it would inevitably follow that the dismissal of the complaint in the present case would have to be upheld. On the other hand, since we have come to the conclusion that the present complaint was properly dismissed by the district court, even though it should eventually be determined that we were in all respects correct in our rulings in the *General Electric case*, we have upon second thoughts decided to dispose of the present case now, without waiting for further light and leading from the Supreme Court.

The district court pointed out that the present litigation differs radically from the one presented in the *General Electric* case in that here the plaintiff seeks a mandatory injunction enforcing a collective agreement to submit to arbitration a new contract to govern employment conditions at defendant's plant following the

expiration of a collective bargaining agreement; that is, "the Court is asked to direct what may conveniently be described as a *prospective* or *quasi-legislative* arbitration establishing future labor conditions not *specifically* envisaged in their earlier contract." (141 F. Supp. at 554.) We agree with the district court that, assuming the constitutionality of a statute under which the Congress, with its eyes open, might authorize the federal courts to enforce legislative awards of arbitrators, nevertheless, "the present United States arbitration statute does not seek to reach the constitutional limit, but is concerned only with the enforcement of quasi-judicial awards directed at the ascertainment of facts in a past controversy, and at the prescription of recoverable damages or other suitable awards for that which has been broken not for that which is to be built." (Id. at 557-58.) For further detail we are content to refer to the opinion by Judge Wyzanski in the district court. 141 F. Supp. 553 (1956).

A judgment will be entered affirming the judgment of the District Court.

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OCTOBER TERM, 1956

NO. ~~1070~~ 175

BOSTON PRINTING PRESSMEN'S UNION NO. 67,

PETITIONER,

v.

POTTER PRESS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Boston, Massachusetts

Supreme Court of the United States

OCTOBER TERM, 1956

No.

BOSTON PRINTING PRESSMEN'S UNION NO. 67,

PETITIONER,

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POTTER PRESS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

I.

Question Presented

Whether Section 301 of the Labor Management Relations Act of 1947 authorizes the Federal courts to enforce a provision in a collective bargaining agreement between an employer and a labor organization representing employees in an industry affecting interstate commerce whereby the parties undertake to submit to arbitration any failure to agree concerning the terms and conditions of employment to take effect upon the expiration of such agreement.*

* In the courts below petitioner also sought enforcement of such arbitration pursuant to the United States Arbitration Act, and a declaratory judgment to the effect that the collective bargaining agreement between the parties required such arbitration pursuant to the Federal Declaratory Judgment Act. These issues have not been set forth in the petition for certiorari and are assumed to be abandoned. Supreme Court Rules, Rule 23 1 (c).

II.

Argument

This case comes to this Court in the wake of *Textile Workers of America v. Lincoln Mills of Alabama*, 353 U.S. ——; *General Electric Company v. Local 205, United Electrical, Radio & Machine Workers of America (U.E.)*, 353 U.S. ——; and *Goodall-Sanford, Inc. v. United Textile Workers of America*, 353 U.S. ——, all decided on June 3, 1957. The *General Electric* and *Goodall-Sanford* cases, like the present case, arose in the First Circuit.

The issues in the *General Electric* case were all raised in the present case. Such were the questions whether Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 136 (1947); 29 U.S.C. Sec. 141 *et seq.*, confers jurisdiction upon the Federal courts in respect of an action for violation of a contract between a labor organization and an employer engaged in interstate commerce; whether Section 301 or the United States Arbitration Act, 61 Stat. 669 (1947); 9 U.S.C. Sec. 1 *et seq.*, authorizes the enforcement of an agreement to arbitrate a dispute arising under a collective bargaining agreement between such a labor organization and employer; and whether the Norris-La Guardia Act, 47 Stat. 70 (1932); 29 U.S.C. Sec. 101 *et seq.*, withdrew from the Federal courts the power to enforce such arbitration.

Had this Court reversed the *General Electric* case on any of the foregoing issues, the present case would have been controlled, adversely to petitioner, by that decision. And for that reason the Court of Appeals deferred its decision in this case, awaiting the disposition by this Court of the *General Electric* case. See 241 F.(2d) 787, 789. However, prior to the decision of this Court in the *General Electric* case, the Court of Appeals decided this case

on a ground that was not present in the *General Electric* case and which sharply distinguishes the two cases.

Arbitration was sought in the *General Electric* and its companion cases concerning grievances. Work loads and work assignments were involved in the *Lincoln Mills* case; the layoff of employees, in the *Goudall-Sanford* case; and the appropriate wage rate to be paid an employee and the justification for a discharge, in the *General Electric* case. Each such grievance was in substance a claim for the alleged breach of a collective bargaining agreement. In contrast, the dispute concerning which arbitration was sought in the present case involves no claim for breach of contract but a failure of the parties to agree on the terms and conditions of a renewal collective bargaining agreement. Thus, the precise issue in this case is whether Section 301 empowers the Federal courts to enforce an agreement to "arbitrate" future conditions of employment, or, in the phrase of Judge Wyzanski, "*prospective* or *quasi-legislative* arbitration" (R. 33), or "arbitration of the nonjusticiable dispute." See Gregory and Orlikoff, "The Enforcement of Labor Arbitration Agreements," 17 U. Chi. L. Rev. 233, 248 *et seq.* (1950).

The issue in this case is *res nova* in this Court. Furthermore, there is no decision of any other court of appeals which is in conflict with the decision herein.

Under the Railway Labor Act, 44 Stat. 577 (1926) as amended; 45 U.S.C. Secs. 151 *et seq.*, two courts of appeals have enforced arbitration awards where the underlying disputes involved such nonjusticiable or legislative matters as new wage rates and hours of labor. *See Atchison, etc. Ry. Co.* v. *Brotherhood of L. F. & E.*, 26 F.(2d) 413 (C.A. 7th, 1928); *Atchison, etc. Ry. Co.* v. *Ferryboatmen's Union*, 28 F.(2d) 26 (C.A. 9th, 1928). But enforcement of arbitration awards lies within the traditional equity powers of the Federal Courts. *Red Cross Line* v. *Atlantic Fruit Com-*

Furthermore, the case has been correctly decided by the courts below. Both as a matter of statutory construction and by virtue of constitutional limitations, Section 301 should be construed not to authorize enforcement of so-called arbitration of nonjusticiable disputes.

The Court of Appeals held that the power of the Federal courts to enforce arbitration agreements is defined in the United States Arbitration Act (9 U.S.C.), and that that statute does not extend to the arbitration of nonjusticiable disputes. This conclusion applies, a fortiori, to Section 301.

Enforcement of agreements to arbitrate the terms of collective bargaining agreements to take effect in the future has been denied under usual arbitration statutes. *In re Buffalo and Erie Ry. Co.*, 250 N.Y. 275 (1929); *Cont. Bk. Supply Co. v. Int. Brotherhood of Bookbinders*, 239 Mo. App. 1247, 201 S.W. (2d) 531 (1947). These decisions rest on the ground that it is the function of courts not to make contracts for parties but to enforce them.

Amendments to the New York Arbitration Law, adopted subsequently to the *Buffalo and Erie* case, have specifically authorized arbitration of "controversies dealing with rates of pay, wages, hours of employment or other terms and conditions of employment" (New York Laws, 1940, Chapter 851), "without regard to the justiciable character of such controversy or controversies" (New York Laws, 1952, Chapter 757). See New York Civil Practice Act, Sec. 1448. Under these amendments, agreements to arbitrate nonjusticiable disputes arising under existing contracts are now enforced; *Hotel Concord, East Point Hotels v. Hotel Front Service Employees Union*, 140 N.Y.S. (2d) 848 (1955), *Duinas v. Slovika*, 89 N.Y.S. (2d) 842 (1949), although arbitration of the terms of a future contract has, so far as we can determine, never been compelled. See Gregory and Orlikoff, *op. cit. supra*, 17 U. Chi. L. Rev. at 250.

Our minimum contention is that arbitration of nonjusticiable disputes should not be enforced without explicit statutory authorization. Congress should determine, after full consideration, whether the enforcement of such agreements is in the national interest. Surely there is nothing in Section 301 or its legislative history that indicates that Congress intended Section 301 to reach such agreements.

Furthermore, if Section 301 were construed to authorize the enforcement of arbitration of nonjusticiable disputes, it might be unconstitutional. Since the basic dispute between the parties is their failure to agree concerning the terms and conditions of a contract, there is grave doubt whether this proceeding constitutes a "case" or "controversy" within the meaning of Section 2 of Article III of the Constitution. See *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227 (1937); *Nashville, C. & St. L. R. Co.* v. *Wallace*, 288 U.S. 249 (1933); *Liberty Warehouse Company* v. *Grannis*, 273 U.S. 70 (1927). Neither party has "suffered a wrong through the action of the other [party], furnishing ground for judicial redress. . . ." *Massachusetts* v. *Missouri*, 308 U.S. 1, 15 (1939). To avoid this Constitutional question, Section 301 should be construed not to extend to the enforcement of arbitration of nonjusticiable disputes.

A remand of this case to the Court of Appeals for reconsideration in the light of the *Lincoln Mills* group of cases would serve no useful purpose. That Court has already held that the United States Arbitration Act, with general provisions defining matters subject to arbitration, does not cover nonjusticiable disputes. That Court would surely reach the same conclusion in construing the vague provisions of Section 301.

Conclusion

The case was correctly decided below. There is no conflict of decisions and no important question of Federal law that should be decided by this Court at this time. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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